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REPORT OF THE SECURITY COUNCIL

SECURITY COUNCIL
Forty-ninth year

Letter dated 9 November 1994 from the Permanent Representative of France to the United Nations addressed to the Secretary-General

In his statement to the General Assembly, Mr. Alain Juppé, Minister for Foreign Affairs of the French Republic, expressed the wish for the Security Council to increase its reliance on public debate in reaching its decisions. The aide-mémoire annexed hereto sets forth in greater detail the grounds for this initiative and indicates some of the modalities through which it might be implemented. I should be grateful if you would have this text circulated as a document of the General Assembly, under agenda item 11, and of the Security Council.

(Signed) Jean-Bernard MERIMEE

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Annex

Aide-mémoire concerning the working methods of the Security Council

I. SUMMARY

1. Many delegations believe that the working methods of the Security Council should allow for greater transparency. This criticism can, in our view, be explained basically by the fact that nearly all the work of the Council takes place in the form of informal consultations to which States not members of the Council do not have access. This working method has been very useful at a time when, after a long period of paralysis owing to the cold war, the Security Council has had to learn to work as a unit in order to ensure prompt and effective action by the Organization in accordance with Article 24 of the Charter. However, now that the Council has, as it were, completed its basic training, it seems to us that the time has come to allow for fuller public debate in its work. The Council cannot be weakened but should, rather, be strengthened by meeting in public much more frequently than it does at present in order to hear the views of States not members of the Council and engage in a dialogue with them before taking positions on important questions - without, of course, giving up the essential informal consultations procedure. This, in our view, is the real solution to the dissatisfaction which many Member States experience and which we understand.

2. We believe that the key to the problem is rule 48 of the provisional rules of procedure of the Security Council, which provides as follows: "Unless it decides otherwise, the Security Council shall meet in public". There should be a dividing line between information, consultation and general exchanges of views, which should, in principle, remain public, and negotiation, the detailed preparation of a decision to be adopted, which is normally governed by other procedures.

3. In this context, France's proposal is to add to the only case currently applicable, that of a discussion organized on the occasion of the official announcement of a decision, two new cases in which the Council should meet in public:

(a) Orientation debates open to all Members of the Organization at a time when the Council is preparing to begin consideration of an important question;

(b) Public exchanges of views between members of the Security Council.

4. Speaking before the General Assembly at its forty-ninth session on the subject of the working methods of the Security Council, the Minister for Foreign Affairs of the French Republic stated that the Council must allow for fuller public debate in reaching its decisions than it currently did:

"Hence, we are in favour of the Council's holding official meetings - without of course giving up its informal consultations - to hear Members of the Organization and talk with them before taking positions on the important questions before it. We believe that this is the appropriate response to the demand for transparency made by many delegations."

5. The purpose of this aide-mémoire is to specify the impact and consequences which this French initiative could have.

II. THE RECENT PRACTICE OF THE SECURITY COUNCIL DOES NOT ALLOW FOR SUFFICIENT PUBLIC DEBATE AND GIVES IT A STEREOTYPICAL ROLE

6. The Security Council, having been confronted since the early 1990s with a volume of business it had not experienced up to then, became accustomed to carrying out most of its work in the form of private consultations. This working method satisfied a legitimate concern with facilitating the search for a compromise among delegations in order to ensure prompt action by the Organization. It does not, of course, conflict with any rule or principle: all international negotiating bodies proceed similarly and, in addition to their plenary meetings, make it possible for the delegations concerned to meet in working groups or drafting groups in order to hammer out their differences in a more comfortable setting with a view to submitting to the body in plenary meeting a draft text likely to win its agreement. The General Assembly, its Main Committees and its subsidiary organs are perfectly familiar with this method, which is indispensable in cases where an agreement must be reached. It is especially necessary for the Security Council to have this tool at its disposal since it is required to reach decisions rapidly.

7. Probably in order to avoid the recurrence of the difficult public meetings punctuated by procedural disputes which had marked the cold war era, special attention has for several years been given to delivering only a finished product at official meetings of the Council. In other words, it is still customary nowadays to wait until all the differences of opinion within the Council have been settled, and a text has been negotiated down to the last comma, before holding an official meeting. The script for such a meeting has always been worked out beforehand in its tiniest details so as to leave no room for surprises. The consequence of this is, inevitably, the declaratory, rigid style of such meetings, at which delegations not members of the Council may be heard reading out their prepared statements before a decision is taken, with members presenting before and after the vote explanations which, of course, do not take into account the arguments put forth during the debate leading up to the vote.

8. This concept of public debate significantly impoverishes it and leads to a vicious circle. The fact that statements have no influence on the decision which, in general, has already been taken before the meeting is called to order, induces speakers to adopt a declaratory stance and not to seek dialogue; the conventional nature of the speeches renders the meeting far less interesting. The consequence of this is that some delegations do not seem to be convinced spontaneously that increasing the frequency of public meetings would enhance the flow of discussion between members of the Security Council and other Members of

the Organization. Indeed, if all that was involved was increasing the number of meetings as currently organized, we would spend a great deal of time in them without gaining a clearer knowledge of the nuances of the position of each Member State. However, the search for a better balance between public and private meetings would certainly give a new impetus to public debate by eliminating the sterility from which it suffers today, a sterility closely linked to the expletive and marginal function to which such debate is currently relegated.

III. TWO TYPES OF SOLUTION ARE PROPOSED TO REDUCE THE OPACITY EXPERIENCED BY STATES MEMBERS OF THE ORGANIZATION

9. In the situation described above, the remedy most generally proposed is to give delegations which are not members of the Council greater access to the information concerning informal consultations. Much has already been done to that end, by announcing informal meetings in the Journal and by making available the documents submitted with a view to adoption, to cite but two examples. However, any attempt to proceed further in that direction, by disseminating the content of the discussion in informal meetings or by preparing verbatim records of those meetings, for instance, would negate the very purpose of the meetings. As has been pointed out, any negotiating body needs a place where it can conduct informal, exploratory and sometimes confidential exchanges of views. That is not, in principle, shocking and is, in any case, inevitable. If the informal meetings were no longer informal, new more or less secret working methods having the same purpose would necessarily emerge. Such a development would serve no practical purpose, for if informal meetings were to receive wide publicity they would be nothing more than a hybrid form of public meeting.

10. Recommending changes in the conditions in which informal consultations take place is certainly useful, but considering only such recommendations and nothing more would mean being satisfied with superficial and marginal improvements instead of tackling the problem at its source.

11. Rule 48 of the provisional rules of procedure provides as follows: "Unless it decides otherwise, the Security Council shall meet in public". The only type of meeting envisaged in this rule is the official meeting. In the procedural texts applicable to the Security Council this type of meeting is conceived of as a genuine debate, as can be seen from rules 27 to 39 of the rules of procedure. Nothing imposes the current rigidity and nothing prevents any member of the Council from requesting a meeting, which must be called once it has been requested.

12. In this connection, it is necessary to beware of a tendency to regard informal consultations as another form of Council meeting. This runs directly counter to the rules of procedure in force, according to which informal consultations have no legal existence and are thus subject to no regulation. They are merely a convenient practice, a voluntary arrangement. As soon as the Council has reached a decision, it must be taken in a public meeting. That is, indeed, what happens now, but the public meetings of the Council are limited to the time necessary for the formal adoption of those decisions. Thus, a convenient practice has become the regular working method of the Council, which

departs considerably from the spirit of the rules of procedure and is not conducive to the flow of information to and from the Council.

13. The view that the States concerned should be associated with the informal consultations of the Council is tantamount to considering that nothing useful can be done in public and that if a State wishes to influence a decision it must gain admittance to the private meetings or draw as close to them as possible. In our view, this reasoning is flawed, since it assumes that a debatable development in the practice of the Council is accepted, instead of seeking to correct that deviation: at least a significant part of the Council's work should be done in public, under the eyes of all delegations.

IV. A BETTER BALANCE BETWEEN OFFICIAL MEETINGS AND INFORMAL CONSULTATIONS IS DESIRABLE AND POSSIBLE WITHOUT REDUCING THE EFFICIENCY OF THE COUNCIL

14. Currently, there is only one form of public meeting of the Council: the meeting whose purpose is the adoption of a resolution or a decision or the reading out of a statement by the President. Two other types of situation in which the Council could meet in public should be envisaged in the light of the questions currently on its agenda.

15. The first formula is that of the orientation debate where the Council, on taking up a new question or beginning its consideration of an important matter, would give the floor to States Members of the Organization at their request so as to hear their views on the subject and discuss with them possible courses of action in that regard. It is quite clear that if this formula is to be viable, delegations which are not members of the Council will be expected to display a certain moderation as regards their requests to speak and the length of their statements. A balance would have to be struck fairly quickly in the common interest of the Members of the Organization in order for the discussion to take place within a reasonable period of time. The provisional rules of procedure make it possible for the President of the Council to control the debate and guide it in a useful direction. Thus, the States of the region, other States concerned in a conflict or an emergency situation threatening international peace and security, troop-contributing States, and, in general, any Member State would have the opportunity to express its views on a problem, directly and publicly, to the Council before the latter defined its position. We feel that this is a veritable right for the Members of the Organization, since the Council exercises its powers on their behalf.

16. The second possibility which is not currently utilized is to hold public meetings where the Council, without giving the floor to delegations which are not members, holds an exchange of views on a matter which lends itself to this approach. There have been many recent cases where members of the Council have expressed their views in an informal meeting which could perfectly well have been held in public. In many cases, for example when beginning their consideration of a question, the members of the Council express in turn their general views on the course of a conflict or operation and there seems to be no particular reason why those views should remain confidential. The position of France is that recourse to informal consultations should not be general but

limited to cases where a non-public working method is particularly useful, for example, when preparing a written document. But the basic principle should be that publicity is the rule, unless there is a need to act otherwise.

17. To that end, the French delegation is prepared, as soon as the occasion arises, to use its right, based on rule 2 of the provisional rules of procedure, to request a public meeting of the Council for a debate falling within either of the aforementioned categories. It invites other members of the Council wishing to achieve genuine transparency in accordance with the basic rules of the Organization to do likewise.

18. However, the French delegation is also well aware of the need to avoid unnecessarily increasing the workload of the Security Council. In order to strike the right balance between the requirements of publicity and efficiency, the President of the Security Council should undertake bilateral consultations at the beginning of the month and in the initial phase of each major debate in order to determine, on the basis of the suggestions made to him, the topics which could be discussed in a public meeting and the dates on which those meetings could take place. In our view, there is no question of establishing a principle of automaticity which would make it impossible to manage the way in which the Council allots its time. An effort must undoubtedly be made as regards foresight and moderation. With the good will of all concerned, there is no doubt that things will rapidly fall into place.

19. A new phase could then begin in the existence of the Council and in the history of its relationship with the Members of the United Nations as a whole. After a long period of paralysis and relative inefficiency, followed by a phase marked by many multiform actions conducted in the interest of all but prepared in relative secrecy, the United Nations organ bearing the main responsibility for the maintenance of international peace and security could enter its maturity, combining a greater mastery of the means available to it with a constant concern to be the faithful interpreter of the interests of the Organization and its Members as a whole, free of complexes and any pointless desire for secrecy. It will thus strengthen the link of confidence which ought to bind it to those on behalf of whom it is supposed to act.